

STATE OF MICHIGAN  
COURT OF APPEALS

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SUSANNE K. LEFEVE,

Plaintiff-Appellee,

v

ALLEN P. LEFEVE,

Defendant-Appellant.

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UNPUBLISHED

January 12, 2006

No. 257116

Montcalm Circuit Court

LC No. 02-001564-DM

Before: Zahra, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm.

Defendant first claims that the court failed to enforce the parties' stipulation concerning marital debt. We disagree. "In reviewing a dispositional ruling in a divorce case, we first review the trial court's findings of fact for clear error and then decide whether the dispositional ruling was fair and equitable in light of the facts." *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995), citing *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

During the hearing, plaintiff testified on cross-examination that, "[i]f it's something we did together, I guess we can pay [credit cards] off first but if he acquired them after, I don't— [defense counsel interjected]." Also, in response to defense counsel's question whether, "any credit card debt that you had, any credit card debt that he had, or anything that was in both of your names prior to August 2<sup>nd</sup>, would be divided equally and you would each be responsible for 50%," plaintiff stated, "yes." Defense counsel later elicited defendant's "agreement with [his] wife that the credit card balances as of the beginning of August should be a joint liability and paid equally by the two of you." Defendant also stated that he would be responsible for "anything . . . incurred since August 1<sup>st</sup>."

The trial court, in a written opinion, stated:

Exhibit 15 lists the debts which the Defendant claims are joint debts. The Plaintiff denied having used the accounts and Defendant presented no proofs indicating what these debts were for, when they were incurred who made

payments on them or how the balances listed on exhibit 15 were arrived at. Therefore, Court is not considering these as marital debts in the division of the property.

We cannot conclude the above testimony constitutes a stipulation. A stipulation must be “definite and certain in order to afford a proper basis for judicial decision, and it is essential that [it] be assented to by the parties or those representing them.” *Whitley v Chrysler Corp*, 373 Mich 469, 474; 130 NW2d 26 (1964), quoting 83 CJS, *Stipulations*, § 3, p 3. Here, plaintiff’s one-word answer to defense counsel’s compound question on cross examination, and defendant’s agreement with his own counsel’s question cannot seriously be considered a “meeting of the minds,” to form an agreement. The above testimony does not manifest a intent to enter into agreement , and thus, there is no stipulation.

Further, the trial court did not err in not accepting defense counsel’s proposed notion of martial debt as “any credit card debt that [plaintiff] had, any credit card debt that [defendant] had, or anything that was in both [their] names prior to August 2<sup>nd</sup>, would be divided equally and you would each be responsible for 50%.” The trial court is required under MCL 552.19 to make a “just and reasonable” allocation of marital assets. Stipulations of fact are binding, but stipulations of law are not binding. *Gates v Gates*, 256 Mich App 420, 426; 664 NW2d 231 (2003). In addition, there was evidence presented that plaintiff did not have several of the cards during the marriage. Plaintiff only specifically agreed that she used one the cards during the marriage and that debt should be paid from the sale of the home. However, defendant had her removed from that card in August 2002, and there was no evidence that the listed debts were not incurred after that time. Further, the trial court also found defendant’s testimony incredulous. Given this evidence and the trial court’s credibility determination, we cannot conclude that the trial court erred in this regard.

Defendant next claims that the court committed error requiring reversal in its division of the marital estate, specifically the personal savings plan, vacation time, and personal property. We disagree. “Property disposition rulings will be affirmed unless we are left with the firm conviction that the distribution was inequitable.” *Hanaway, supra* at 292 (citations omitted).

“The goal of a court when apportioning a marital estate is to equitably divide it in light of all the circumstances. . . . The trial court need not achieve mathematical equality, but the trial court must clearly explain divergence from congruence.” *Reed v Reed*, 265 Mich App 131, 152; 693 NW2d 825 (2005), citing *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). In order to achieve this equity, the court should consider the following factors: (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. *Sparks, supra* at 159-160; *Dart v Dart*, 460 Mich 573, 583; 597 NW2d 82 (1999). “The significance of each of these factors will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise.” *Byington, supra* at 115. The court made specific findings in regard to each of the above factors.

The crux of the parties’ disagreement over the division of the personal savings plans (PSP) is in the parties’ varying accounts of withdrawals from those plans. Defendant argues that exhibits 9 and 10 represent the withdrawals he made from his PSP accounts in August, and that

exhibits 11 and 12 represent these same August withdrawals plus withdrawals he had made from his PSP accounts in May. Plaintiff argues that these four exhibits represent four different transactions.

Plaintiff offered exhibits 9-12 into evidence. Defendant did not object and offered very little evidence to contradict plaintiff's explanation of the exhibits. The evidence defendant did present did not support defendant's explanation. Defendant provided conflicting testimony as to the actual amount of the withdrawals in May; he provided no documentation (cancelled checks or otherwise) showing that any deposits he made in May were from the PSP accounts; he provided no statements from Delphi or GM showing that he withdrew moneys from those accounts in May; and he has not given the court an itemized explanation of which withdrawals from which PSP accounts total the figures shown in exhibits 11 and 12. Rather, defendant asks the court to draw the conclusion that these two figures are the August withdrawals from the two PSP accounts plus the withdrawals in May based only on defendant's testimony and a checking account statement that did not specify from where the deposits originated. The trial court has already found defendant's testimony unworthy of belief, and this Court will not second guess that determination. See *Stoudemire v Stoudemire*, 248 Mich App 325, 339; 639 NW2d 274 (2001). Accordingly, this Court is not left with the definite and firm conviction that a mistake has been made regarding how the trial court calculated the defendant's personal savings plans and Fidelity investments.

Defendant also argues that the trial court erred in finding his banked vacation time a marital asset. We disagree.

In *Lesko v Lesko*, 184 Mich App 395; 457 NW2d 695 (1990), this Court held that "banked leave days are a divisible marital asset." *Id.* at 401. Defendant claims it is inequitable to include his banked vacation days as a divisible marital asset. While this Court has expressed disagreement with *Lesko* on other grounds, *Booth v Booth*, 194 Mich App 284, 290; 486 NW2d 116 (1992), *Lesko* remains binding precedent on this point. MCR 7.215(H). Accordingly, we reject defendant's argument.

Defendant also argues that no evidence was presented to establish that he had two hundred hours of vacation pay available in August 2002. Defendant correctly notes that the only evidence offered in this regard, exhibit 8, states that defendant would have two hundred hours of vacation time available as of December 31, 2002 and that defendant's base hourly rate was \$24.21. However, at trial, defendant did not object to exhibit 8 and failed to offer any evidence or testimony suggesting that the information in exhibit 8 was inaccurate. Accordingly, we cannot conclude that the trial court clearly erred in calculating the vacation time available for division by the court.

In regard to the division of the parties' personal property, the trial court made a finding under each of the *Sparks* factors and determined that defendant would keep the personal property in his possession and all of his hunting and fishing equipment, plaintiff would keep the personal property in her possession, and the parties would each receive half of the tools.

Defendant also claims that the court did not address the valuation of a tractor and equipment. Contrary to defendant's argument, the court did address the tractor's value and stated, "[e]ach of them gave their opinion as to what they thought [the tractor] was worth...and I

didn't think the defendant's testimony was credible overall so I think relying on the plaintiff's statement that she sold it for \$1,000.00 is as much an indication of the value as the defendant's opinion that it was \$7,000.00." As previously stated, this Court will not second-guess the trial court's determination as to the witnesses' credibility.

Additionally, defendant argues that the division of property was inequitable; but gives no concrete valuation of property or any recommendation as to how to make the division equitable. Based on the trial court's determinations concerning each of the *Sparks* factors listed above, the trial court's determinations as to the credibility of the witnesses' testimony, the seemingly equal division of assets, and the lack of evidence presented by defendant, we find no error in the trial court's division of the parties' personal property.

Defendant last argues that the trial court erred when it awarded plaintiff spousal support. "A trial court's decision regarding alimony must be affirmed unless the appellate court is firmly convinced that it was inequitable." *Olson v Olson*, 256 Mich App 619, 629-630; 671 NW2d 64 (2003).

Defendant claims that the recent birth of plaintiff's twins, who are not children of defendant, affects plaintiff's ability to earn a living as a daycare provider. Defendant also argues that the recent birth of the twins should have been taken into consideration regarding general principles of equity because the unknown father of the twins could provide financial support to plaintiff. Under MCL 552.13, the trial court may award alimony. In doing so the court may consider:

(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. [*Gates v Gates*, 256 Mich App 420, 424; 664 NW2d 231 (2003).]

Here, the court addressed each of these factors in its April 18, 2003 opinion and again in its January 6, 2004 opinion. The trial court, in relevant part, found that plaintiff was in need of spousal support because neither party was more at fault for the breakdown of the marriage than the other; the parties were married for fifteen years; defendant currently has a better ability to earn more money than plaintiff; and defendant earned more money than plaintiff throughout the marriage. We are not firmly convinced that the trial court's award of spousal support was inequitable.

Affirmed.

/s/ Brian K. Zahra  
/s/ William B. Murphy  
/s/ Janet T. Neff